

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Pending before the Court is the Motion for Temporary Restraining Order (ECF No. 26) filed by *pro se* Plaintiff Sean T. Doutre on May 20, 2013.

## I. BACKGROUND

Plaintiff is a prisoner in the custody of the Nevada Department of Corrections, and on May 8, 2012, he filed an Application for Leave to Proceed *In Forma Pauperis*, along with a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging deliberate indifference to medical needs against Defendants Romeo Aranas, B. Gutierrez, C. Dressler, B. Oliver, James Bannister, James Cox, and John/Jane Doe. (ECF No. 1.) His Complaint was screened pursuant to 28 U.S.C. § 1915A, and 28 U.S.C. § 1915, and filed on October 30, 2012. (Screening Order, ECF No. 3; Compl., ECF No. 4.) The Court ordered that Plaintiff could proceed with his claims against Defendants Aranas, Gutierrez, Dressler, Oliver, and a Doe defendant, alleging deliberate indifference to medical needs in violation of the Eighth Amendment, and that all other claims and defendants were dismissed with prejudice. (*Id.*) The action was stayed for ninety days and proceeded to mediation, but a settlement was not reached. (Screening Order, ECF No. 3; Mins. of Proceedings, ECF No. 12.) On February 11, 2013, Plaintiff was granted leave to proceed *in forma pauperis* and service of Plaintiff's Complaint was ordered. (Order, Feb. 11, 2013, ECF No. 13.)

1      **II.    LEGAL STANDARD**

2      Federal Rule of Civil Procedure 65 governs preliminary injunctions and temporary  
 3      restraining orders, and requires that a motion for temporary restraining order include “specific  
 4      facts in an affidavit or a verified complaint [that] clearly show that immediate and irreparable  
 5      injury, loss, or damage will result to the movant before the adverse party can be heard in  
 6      opposition,” as well as written certification from the movant’s attorney stating “any efforts  
 7      made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b).

8      Temporary restraining orders are governed by the same standard applicable to  
 9      preliminary injunctions. *See Cal. Independ. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181  
 10     F.Supp. 2d 1111, 1126 (E.D. Cal. 2001). Furthermore, a temporary restraining order “should  
 11     be restricted to serving [its] underlying purpose of preserving the status quo and preventing  
 12     irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose*  
 13     *Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

14     A preliminary injunction may be issued if a plaintiff establishes: (1) likelihood of  
 15     success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief;  
 16     (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public  
 17     interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “Injunctive relief [is]  
 18     an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is  
 19     entitled to such relief.” *Id.* at 22. The Ninth Circuit has held that “‘serious questions going to  
 20     the merits’ and a hardship balance that tips sharply toward the plaintiff can support issuance of  
 21     an injunction, assuming the other two elements of the *Winter* test are also met.” *Alliance for the*  
 22     *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).

23      **III.    DISCUSSION**

24      Rule 65(b)(1) permits a court to “issue a temporary restraining order without written or  
 25      oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a

1 verified complaint clearly show that immediate and irreparable injury, loss, or damage will  
2 result to the movant before the adverse party can be heard in opposition; and (B) the movant's  
3 attorney certifies in writing any efforts made to give notice and the reasons why it should not be  
4 required." Fed. R. Civ. P. 65(b)(1).

5 Here, Plaintiff has attached an affidavit of his notification to Defendants of his request  
6 for temporary restraining order and preliminary injunction. However, he does not provide a  
7 basis for the Court to find that "immediate and irreparable injury, loss, or damage will result" to  
8 him before Defendants can be heard in opposition, as required by Rule 65(b)(1)(A).  
9 Accordingly, the Court finds that the requisite clear showing has not been provided, and that  
10 therefore the Court cannot grant Plaintiff's request for an injunction on an *ex parte* basis. The  
11 Court will consider Plaintiff's request pursuant to his contemporaneously filed Motion for  
12 Preliminary Injunction (ECF No. 27), according to the regular briefing schedule.

13 **IV. CONCLUSION**

14 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Temporary Restraining Order  
15 (ECF No. 26) is **DENIED**.

16 **DATED** this 21st day of May, 2013.

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Gloria M. Navarro  
United States District Judge